

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>V.</b>	)	<b>CASE NO: 2:06-cr-108-MHT</b>
	)	
<b>GARETT ALBERT DYKES</b>	)	

**UNOPPOSED MOTION TO AMEND JUDGMENT  
TO INCLUDE REFERENCE TO CONCURRENT STATUS AND JAIL CREDIT**

NOW COMES the Defendant, Garrett A. Dykes, by and through undersigned counsel, and respectfully moves this Court to AMEND the judgment entered in this action on September 29, 2006, to include a (a) an order that this sentence shall be served concurrent with any state sentence imposed in the related cases and (b) a recommendation that the Bureau of Prisons award jail credit to Mr. Dykes since January 10, 2005. Both of these requests were agreed to in the Plea Agreement (D.E. 11), which was filed with this Court and accepted by this Court.

In support of this Motion, the Defendant would show:

1. The parties agreed, in the Plea Agreement filed with and accepted by this Court, that, “to the extent this Court has the authority, to recommend, with respect to offenses related to the defendant’s conduct in the instant matter, that (a) the federal sentence run concurrently with any sentence imposed by the State of Alabama; and (b) the defendant receive credit against his federal sentence for time spent in state pretrial detention.” (Plea Agreement, D.E. 11, p. 3, paragraph c(2).)
2. The defendant will shortly be sentenced on related state offenses, to which he has already pled guilty in the Circuit Court of Elmore County, Alabama. His state plea agreement calls for the state sentences to be served concurrently to the federal sentence in this matter. The state and

federal prosecution authorities were each aware of the other's pending charge and consulted with each other in reaching the state and federal plea agreements, with the intent that a "global resolution" be reached covering both jurisdictions.

3. The defendant has been in state pretrial detention and custody from January 10, 2005 until he entered federal pretrial detention on September 22, 2006. (See handwritten notation on D.E. 42, noting that Mr. Dykes had been picked up from Elmore County on the federal detainer on September 22, 2006.)

4. This Court has the authority to impose the federal sentence to be served concurrently to state sentences, even where the state sentences have not yet been formally imposed. *U.S. v. McDaniel*, 338 F.3d 1287, 1288 (11<sup>th</sup> Cir. 2003) ("Our opinion in *United States v. Andrews*, 330 F.3d 1305 (11th Cir.2003), clarifies that under *United States v. Ballard*, 6 F.3d 1502 (11th Cir.1993), a district court does have the authority to make a federal sentence concurrent to a state sentence not yet imposed for pending state charges.")

5. While the Supreme Court has held that in *United States v. Wilson*, 503 U.S. 329, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992), that under 18 U.S.C. § 3585(b) the Attorney General, rather than the courts, is to compute the amount of jail credit available, that statute does not preclude this Court from recommending that such credit be given. Moreover, it is important that the Court make its opinion on this matter known to the Bureau of Prisons. See *Reese v. Bureau of Prisons*, 2006 WL 870802, \*1 (S.D.Tex. 2006) ("the BOP has relied on the silence of the federal sentencing court's judgment to conclude that the sentences were to run consecutively," even though both federal and state prosecutors agreed that the sentences were to run concurrently).

6. Mr. Dykes' circumstances are comparable to those described in *Willis v. United*

*States*, 438 F.2d 923 (5th Cir.1971), in which the Fifth Circuit held that it is appropriate for federal jail credit to be given for time spent in non-federal pre-sentence custody when the inmate was denied bail because of a federal detainer. Mr. Dykes had been identified as the target of a federal investigation in 2005, and undersigned counsel was appointed to represent him in that investigation prior to the filing of this information. See *United States v. Dykes*, **CRIM. MISC. NO. 987**. It was the existence of a federal detainer which ultimately brought Mr. Dykes into federal custody when, with awareness of both the federal detainer and the federal sentencing, his state bond was reduced to permit release on his own recognizance.

WHEREFORE, Defendant prays that this Motion be granted and that this Court amend the Judgment to include reference to the intent of the Court and the parties that (a) this sentence is to be served concurrently with the state sentences imposed by the Circuit Court in Elmore County and (b) it is recommended that the Bureau of Prisons award Mr. Dykes credit for the time spent in state pretrial custody, from January 10, 2005 to September 22, 2006.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Todd Brown, Esquire  
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Respectfully submitted,

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